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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450, ON THE DATE INDICATED BELOW.

BY:

René Conti

Date:

May 17, 2004

MAIL STOP AMENDMENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:
Yukihiro OKADA *et al.*

Conf. No.: 2411

: Group Art Unit: 1745

Appln. No.: 10/045,839

: Examiner: Carol Diane Chaney

Filing Date: October 19, 2001

: Attorney Docket No.: 10059-389US (P25427-01)

Title: ELECTRODE ALLOY POWDER AND METHOD OF PRODUCING THE SAME

REQUEST FOR RECONSIDERATION

This is in response to the Office Action dated March 25, 2004 (Paper No. 20040319) in the above-identified patent application.

The Examiner states that while Applicants may have filed a certified copy of Japanese Application No. 2000-398964, a copy of the priority document is not present in the application file. Accordingly, Applicants' submit herewith a photocopy of the certified copy of the priority document as originally submitted with the application on October 19, 2001. It is submitted that the requirements of 35 U.S.C. § 119(b) are now satisfied.

The Examiner has rejected claims 14 and 15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent 6,605,387. The Examiner contends that while the conflicting claims are not identical, they are not patentably distinct, because the present claims 14 and 15 are directed to an electrode powder and battery per se, which are encompassed by the hydrogen storage alloy as claimed by U.S. Patent 6,605,387.

Application No. 10/045,839
Reply to Office Action of March 25, 2004

While not necessarily agreeing with the Examiner's rejection and contentions, Applicants submit herewith a Terminal Disclaimer and Statement of Common Ownership with respect to U.S. Patent 6,605,387, together with the required disclaimer fee. Accordingly, it is submitted that the double patenting rejection is overcome by the enclosed Terminal Disclaimer.

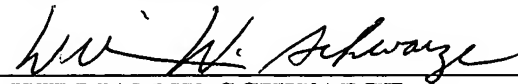
In view of the above and since claims 1-13 have been allowed, it is submitted that the application is in full condition for allowance. Reconsideration and an early Notice of Allowance is respectfully solicited.

Respectfully submitted,

Yukihiro OKADA et al.

May 17, 2004
(Date)

By:



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Enclosures – photocopy of Certification and Japanese Priority Application No. 2000-398964, filed December 27, 2000; Terminal Disclaimer and Statement of Common Ownership; and Terminal Disclaimer Transmittal Letter with Terminal Disclaimer fee